APPEAL NO. 171270
FILED JULY 11, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 3, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to lumbago, spondylolisthesis of L4-5, severe spinal stenosis at L4-5, and broad-based disc bulge at L3-4; (2) the appellant (claimant) reached maximum medical improvement (MMI) on September 7, 2016; and (3) the claimant's impairment rating (IR) is zero percent. The claimant appealed, disputing the hearing officer's determinations of extent of injury, MMI and IR. The claimant contends that the evidence established the compensable injury extends to the disputed conditions and she has not reached MMI. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and that the carrier has accepted as compensable a cervical strain, left wrist sprain, lumbar strain, and a concussion. The claimant testified that she was injured when she tripped and fell landing on concrete.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), does not extend to lumbago, spondylolisthesis of L4-5, severe spinal stenosis at L4-5, and broad-based disc bulge at L3-4 is supported by sufficient evidence and is affirmed.

MMI/IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary. Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of

the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides, in pertinent part, that the assignment of an IR shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The hearing officer determined that the preponderance of the other medical evidence is not contrary to the opinion of the designated doctor that the claimant reached MMI on September 7, 2016, with an IR of zero percent. (Dr. Y), a designated doctor appointed by the Division for purposes of MMI and IR, examined the claimant on September 7, 2016. Dr. Y certified that the claimant reached MMI on September 7, 2016, and assigned a zero percent IR using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). Dr. Y considered and rated a cervical strain, lumbar strain, and concussion. As previously noted the parties stipulated that the carrier has accepted as compensable a left wrist sprain. Dr. Y did not consider or rate a left wrist sprain. Because Dr. Y did not rate the entire compensable injury his certification of MMI and IR cannot be adopted. Accordingly, we reverse the hearing officer's determinations that the claimant reached MMI on September 7, 2016, and the claimant's IR is zero percent.

There are three other certifications of MMI/IR in evidence. On February 8, 2016, the claimant's treating doctor, (Dr. F) examined the claimant and certified that the claimant has not reached MMI. Dr. F based his certification on his assessment of the following conditions: headaches, cervicalgia, displacement of lumbar intervertebral disc, and lumbar radiculopathy. Dr. F did not rate the entire compensable injury and considered conditions that have not been determined to be part of the compensable injury. Accordingly, his certification that the claimant has not reached MMI cannot be adopted.

(Dr. Yo), the first designated doctor appointed by the Division for purposes of MMI and IR, examined the claimant on April 27, 2016, and certified that the claimant had not reached MMI considering the conditions of cervical strain, lumbar strain, and concussion. In opining that the claimant had not yet reached MMI, Dr. Yo noted the EMG/NCV confirmed cervical radiculopathy. Dr. Yo did not consider a left wrist sprain. Accordingly, Dr. Yo's certification of MMI/IR cannot be adopted.

The only other certification in evidence was from (Dr. M), a doctor acting in place of the treating doctor. Dr. M examined the claimant on March 20, 2017, and certified that the claimant reached MMI on March 8, 2017, with a five percent IR. Dr. M

considered and rated the following conditions: cervical sprain/strain, displacement of lumbar intervertebral disc, and lumbar radiculopathy. Dr. M did not consider or rate a concussion or left wrist sprain and considered conditions that have not been determined to be part of the compensable injury. Accordingly, Dr. M's certification of MMI/IR cannot be adopted. Because there is no certification in evidence that can be adopted, we remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to lumbago, spondylolisthesis of L4-5, severe spinal stenosis at L4-5, and broad-based disc bulge at L3-4.

We reverse the hearing officer's determination that the claimant reached MMI on September 7, 2016, and remand the MMI issue to the hearing officer.

We reverse the hearing officer's determination that the claimant's IR is zero percent and remand the IR issue to the hearing officer.

REMAND INSTRUCTIONS

Dr. Y is the designated doctor in this case. On remand the hearing officer is to determine whether Dr. Y is still qualified and available to be the designated doctor. If Dr. Y is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury.

The hearing officer is to advise the designated doctor that the compensable injury of (date of injury), extends to a cervical strain, left wrist sprain, lumbar strain, and a concussion. The hearing officer is also to advise the designated doctor that the (date of injury), compensable injury does not extend to lumbago, spondylolisthesis of L4-5, severe spinal stenosis at L4-5, and broad-based disc bulge at L3-4. The hearing officer is to request the designated doctor to rate the entire compensable injury in accordance with the AMA Guides considering the medical record and the certifying examination.

The certification of MMI should be the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated considering the physical examination and the claimant's medical records. The assignment of an IR is required to be based on the claimant's condition as of the MMI date considering the medical records and the

certifying examination and according to the rating criteria of the AMA Guides and the provisions of Rule 130.1(c)(3).

The parties are to be provided with the designated doctor's new MMI/IR certification and are to be allowed an opportunity to respond. The hearing officer is then to make a determination on the claimant's MMI and IR for the (date of injury), compensable injury.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge